ARAB-MALAYSIAN MERCHANT BANK BERHAD & 2 ORS.

v.

LORI MALAYSIA BERHAD (IN RECEIVERSHIP) & 5 ORS.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' HAJI ABDUL MALEK BIN HAJI AHMAD J.
[CIVIL SUIT NO. D5-22-230-93]
8 APRIL 1994

PRACTICE & PROCEDURE: Order 14 RHC - Triable issues - Plaintiffs financing purchase of lorries - Lorries leased to 1st defendant pursuant to leasing agreements - 6th defendant guarantor - Breach of lease agreements - Claim for monies due under agreements - Lorries registered in 1st defendant's name - Defendants questioning validity of lease agreements - Whether lease agreements enforceable - Plaintiffs instituting multiple actions for same subject matter - Whether appropriate case for summary judgment - Whether an abuse of the process of the Court.

This was an application by the plaintiffs for summary judgment pursuant to O.14 of the Rules of the High Court 1980 (RHC) against the 1st and 6th defendants for monies due under 64 lease agreements.

The plaintiffs financed the purchase of 64 lorries (the vehicles) which were registered in the name of the 1st defendant and leased to the 1st defendant pursuant to 64 lease agreements with the 6th defendant as the guarantor. The 1st defendant purportedly breached the agreements and the plaintiffs instituted a claim to recover the monies due under the agreements. The 1st and 6th defendants questioned the validity of the transactions as they contended that there was no possibility of the registered owner leasing their own vehicles. They contended that the transactions were a device to obtain tax deductions by the plaintiffs after inflating the prices of the vehicles. Furthermore, the plaintiffs had filed a similar action in another Court and a summons in chambers seeking a declaration that they were the legal and beneficial owners of the vehicles which was subsequently withdrawn. The defendants' defence in both suits was that the lease agreements were illegal, void and unenforceable.

Held:

[1] The claim here was clearly for monies due on the leasing agreements the validity of which was pending in the other suit. This was certainly therefore not an appropriate case for summary judgment especially so when the plaintiffs had blatantly initiated multiple actions for the same subject matter and was obviously trying their luck in different Courts. This was surely an undesirable situation and an abuse of the Court's process.

[Plaintiffs' application dismissed with costs].

Cases listed at the end of the judgment as "cases referred to":

Lesco Development Corpn. Sdn. Bhd. v. Malaysia Building Society Berhad [1988] 2 MLJ 184
Bank Bumiputra Malaysia Bhd. v. Esah binti Abdul Ghani [1986] 1 MLJ 16
Malaysian International Merchant Bankers Bhd. v. G & C Securities Sdn. Bhd. & Anor. [1988] 2 MLJ 471
Tinta Press Sdn. Bhd. v. Bank Islam Malaysia Bhd. [1987] 2 MLJ 192
Credit Corpn. (M) Bhd. v. The Malaysia Industrial Finance Corpn. & Anor. [1976] 1 MLJ 83
Syarikat Batu Sinar Sdn. Bhd. & Ors. v. UMBC Finance Bhd. & Ors. [1990] 3 MLJ 468
Mayban Finance Berhad v. Aik Soon Auto Sdn. Bhd. (Formerly known as Aik Soon Auto Finance Sdn. Bhd.) & 4 Ors. [1993] 2 AMR 33 1957

Legislation referred to:

Banking and Financial Institutions Act 1969
Bills of Sale Ordinance
Contracts Act 1950
Finance Companies Act 1969
Hire Purchase Act 1967
Income Tax Act 1967, Third Schedule
Money Lenders Ordinance 1951

For the plaintiffs - Leong Wai Hong; M/s. Skrine & Co.
For the 1st and the 6th defendants - K.S. Narayanan; M/s. K.S. Narayanan & Associates

JUDGMENT

Haji Abdul Malek Bin Haji Ahmad J:

By summons in chambers filed on 9 July 1993, the first, second and third plaintiffs had respectively applied for summary judgment against the first and the sixth defendants for RM10,127,343.52 together with interest on RM8,568,526.64 at the rate of 0.055 per cent daily, for RM5,659,229.08 with interest on RM4,855,018.45 at the rate of 0.0493 per cent daily, for RM2,213,450.24 with interest on

RM1,865,982.56 at the rate of 0.055 per cent daily, all from 1 October 1992 until the date of full and final payment, and solicitor-client costs. Their grounds for the application were simple and straightforward namely that the plaintiffs are lorry lessors, the first defendant is the lessee and the sixth defendant a guarantor and as the first defendant had defaulted with the lease payments, the agreements had been terminated due to the breach.

Learned Counsel for the first and the sixth defendants had questioned the validity of the leasing transactions. He had told the Court that the plaintiffs had filed a similar action in another Court (D3-22-673-92) to seek a declaration that they are the owners of the vehicles and the first defendant here, who is the only defendant there (hereinafter "the defendant"), had opposed that application. Essentially, he added, the same defences raised in the other suit had been adopted here as there was no possibility of the registered owners leasing their own vehicles. He claimed that all the sixty four vehicles affected were registered in the defendant's name and as such the lease agreements were unenforceable. The plaintiffs, he said, had taken advantage of the situation by making these leases to get income tax deductions after overpricing the lease equipment by three to four million ringgit.

In the other suit, the plaintiffs had by way of summons in chambers dated 11 May 1992 applied for a declaration that they are the "legal and beneficial owners" of the vehicles referred to in the sixty four equipment lease agreements entered into between the plaintiffs and the defendant, for restraining orders preventing the defendant from dealing with the vehicles under the agreements, and compelling the defendant to deliver the custody and possession of the said vehicles together with the registration cards to the plaintiffs. When the matter came up for hearing, it was withdrawn by the plaintiffs as it was seeking the same orders prayed for in the statement of claim in the other suit itself.

However, by agreement between the parties pursuant to which a fresh summons in chambers dated 3 July 1992 was filed by the plaintiffs and in a move for the interim preservation of the properties namely to prevent the deterioration of the vehicles and without admission of liability whatsoever, it was agreed that the vehicles be sold by the plaintiffs and the proceeds of sale kept in an interest bearing account with the plaintiffs until the trial of the other suit. It is important to note that the defence in the other suit is that the sixty four lease agreements are illegal, void and unenforceable for the reasons stated therein namely:

4. The defendant company avers that since the execution of the said equipment lease agreement, a sum of RM2,320,000 has been paid by the defendant to the three plaintiffs as rental payments under the said equipment lease agreements.

5. On or about November 1991, arising from a dispute between the defendant company and its shareholders against one Leslie Chedzoy and 3 others, in connection with an alleged agreement to sell the shares of the defendant company, a suit namely Kuala Lumpur High Court Civil Suit No. D4-22-1534-91 was instituted by the defendant company and its shareholders against the said persons. Pursuant to the said suit on 19 November 1991, an Anton Pillar Order was obtained by the defendant and its shareholders and further by the said Order, Tuan Syed Md. Amin bin Syed Jan Aljeffri of Aljeffri & Co., a Public Accountant (Malaysia) was appointed interim receiver by the Court to manage the affairs and properties of the defendant company herein pending further steps to be taken in the said suit or further order.

6. The defendant company avers:

   (1) that the true nature, intent and purpose of the transaction envisaged in the said equipment lease agreements is not in fact and in law a leasing transaction of the said vehicles;
   (2) that the plaintiffs are not the real legal and beneficial owners of the vehicles referred to in the said equipment lease agreements and that further the registration cards to the said 64 vehicles clearly states that the defendant is the registered owner of the vehicles and the plaintiffs have only an ownership claim to vehicles as stated in the said registration cards to the said vehicles;
   (3) that the said transaction and arrangement in essence involved the lending of money although no monies were received by the defendant;
   (4) that the said transaction and the equipment lease agreements are consequently illegal, void and unenforceable by virtue of the Contracts Act 1950 for non-compliance *inter-alia* with the Bills of Sale Ordinance and/or Money Lenders Ordinance and/or Finance Companies Act and/or the Hire Purchase Act.

7. Further and in any event, the defendant avers that the said transaction and equipment lease agreements are a subterfuge and device for tax avoidance as it improperly entitled the plaintiffs to the benefit of the provisions of the Third Schedule of the Income Tax Act 1967. Therefore the purported leasing transaction and equipment lease agreements are void and unenforceable pursuant to the Contracts Act 1950.

8. Further and in any event, even if the transaction is a lease transaction, it is illegal in that the plaintiffs are a finance company/bank within the meaning of the Finance Companies Act 1969/Banking and Financial Institutions Act 1969 which prohibits the plaintiffs from carrying on any other business other than banking and finance business and that consequently, equipment leasing business is prohibited.

9. Further and in any event, the defendant avers that in financing the purchase of the said vehicles, the plaintiffs improperly over priced and over financed the purchase of the vehicles in excess of RM3,000,000 thereby improperly and illegally increasing the alleged lease amounts to the detriment of the defendant.

The defendant had also counterclaimed, in the other suit, as follows:

1. The defendant repeats and adopts paragraphs 1 to 15 of the statement of defence referred above.

2. Wherefore the defendant claims against the plaintiffs for orders as follows:

   (a) a declaration that the alleged leasing transaction of 64 vehicles and each of the equipment lease agreements in connection with 64 vehicles entered into by the defendant with each of the plaintiffs respectively detailed in Annexure A1, A2 and A3 of the statement of claim is illegal, void and unenforceable.
   (b) that consequently, all monies so far paid to the plaintiffs by the defendant amounting to RM2,320,000 referred to in paragraph 4 of the statement of defence be refunded to the defendant pursuant to the provisions of the Contracts Act;
   (c) such further or other reliefs as this Honourable Court may deem fit; and
   (d) costs.

Without the necessity of dealing with the other issues raised, the claim here is clearly for the monies due on the leasing agreements the validity of which is pending trial in the other suit. This is certainly, therefore, not an appropriate case for summary judgment especially so when the plaintiffs had blatantly initiated multiple actions for the same subject matter and obviously trying out their luck in different Courts. This is surely an undesirable situation and an abuse of the Court's process

I had accordingly dismissed the plaintiffs' application with costs.